

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:	ADMINISTRATIVE ORDER
Michael Lee Liphardt aka Melvin Liphardt Clinton County	NO. 2013-AQ-01 NO. 2013-SW-01

TO: Michael Lee Liphardt aka Melvin Liphardt
2497 340th Avenue
De Witt, IA 52742

I. SUMMARY

This order requires you to comply with all open burning and solid waste regulations, and pay a \$3,000 penalty subject to your appeal rights stated in this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Mark Heiderscheit
Iowa Department of Natural Resources
Field Office No. 6
1023 West Madison Street
Washington, Iowa 52353-1623
Phone: 319-653-2856

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative

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Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On April 5, 2012, at the request of DNR Field Office 6, DNR Conservation Officer Luke Webinger investigated a complaint of opening burning of plastic-wrapped copper wire at 2497 340th Avenue, De Witt, Iowa (the site). While at the site, Officer Webinger photographed the concrete pad where the burning occurred and spoke with Michael Lee Liphardt, owner of the site. Officer Webinger asked Mr. Liphardt to contact Field Office 6 to discuss the matter. While discussing the issue with Environmental Specialist Mark Heiderscheit, Mr. Liphardt indicated that the burning had taken place recently. Mr. Liphardt also stated that his business has historically burned the plastic off wiring that he obtained from construction sites.

2. On April 11, 2012, DNR Field Staff visited the site, and observed a metal container or dumpster that contained a boat, furniture, a small freezer, a mattress, clothing, cardboard, and other materials. Evidence of open burning remained at the site.

3. On April 18, 2012, a Notice of Violation letter was sent to Mr. Liphardt informing him of the prohibitions against illegal open burning and illegal open dumping of solid waste.

4. On April 20, 2012, Mr. Liphardt contacted DNR Field Office 6 by phone and indicated that the materials in the dumpster were deposited by a part time employee.

History of Past Violations

5. On April 18, 2008, DNR Field Office 6 received a complaint regarding open burning and illegal disposal of solid waste on the site.

6. On May 7, 2008, DNR Field Staff investigated the complaint. While on site illegal disposal of solid waste and open burning were observed.

7. On May 9, 2008, a Notice of Violation was issued to Mr. Liphardt, instructing him to cease illegal open burning and illegal open dumping of solid waste.

8. On May 16 and May 18, 2008, DNR Field Staff drove by the site and observed burning.

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9. On May 20, 2008, DNR Field Staff visited the site to determine what had been burning. While on site they observed a dumpster that was still smoldering.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited. The open burning of wire by Mr. Liphardt demonstrates violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open dumping of solid waste by Mr. Liphardt demonstrates non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders Michael Liphardt to do the following:

1. Mr. Liphardt shall pay a penalty of \$3,000.00 within 45 days of the date this order is signed by the Director.

2. Mr. Liphardt shall remove any and all solid waste remaining at the site by no later than February 15, 2013; Mr. Liphardt shall immediately discontinue allowing, causing or permitting improper open burning of solid waste at the site described in this order and at any other location in the State of Iowa; and Mr. Liphardt shall comply in the future with all state and local requirements regarding the prohibition against illegal open burning. By no later than February 15, 2013, Mr. Liphardt shall provide to DNR Field Office 6 receipts showing proper disposal or recycling of all solid waste materials from the site.

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3. All existing and future solid waste materials must be reused, recycled, or taken to a sanitary disposal project authorized by the DNR.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$3,000.00 is assessed by this order. The penalty must be paid within 45 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Mr. Liphardt saved time and money by burning plastic covering from the wire in order to obtain a better price at the scrap yard. However, based on what was being burned it appears that the economic benefit was minimal. Therefore, no amount is assessed for this factor.

Gravity of the Violation – The open burning of wire and improper disposal of solid waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Additionally, Mr. Liphardt failed to comply with a previous directive regarding open burning and illegal disposal of solid waste, and Mr. Liphardt permitted a third party to haul and deposit solid waste onto the site. Therefore \$1,500.00 is assessed for the gravity of the violation.

Culpability – Mr. Liphardt owns and controls the site on which the burning took place. He has intentionally allowed the open burning of prohibited wastes. Mr. Liphardt has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to the DNR's rules. For these reasons, \$1,500.00 is assessed for culpability.

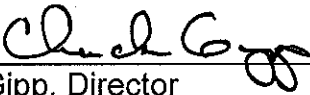
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VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.138 and 455B.308 and 561 IAC 7.4(1), a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 15th day of
January 2013.

Clinton County Air Quality file; Anne Preziosi; DNR Field Office 6; VII.C.2

